BEFORE

THE PUBLIC SERVICE COMMISSION

OF

SOUTH CAROLINA

DOCKET NOS. 2017-370-E, 2017-207-E, and 2017-305-E

In Re: Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Inc., for review and approval of a proposed business combination between SCANA Corporation and Dominion Energy, Inc., as may be required, and for a prudency determination regarding the abandonment of the V.C. Summer Units 2 & 3 Project and associated customer benefits and cost recovery plan. Friends of the Earth and Sierra Club, Complainant/Petitioner v. South Carolina Electric & Gas Company, Defendant/Respondent Request of the Office of Regulatory Staff for Rate Relief to South Carolina Electric & Gas Company's Rates Pursuant to S.C. Code Ann. § 58-27-920	**JOINT PETITIONERS' RESPONSE IN OPPOSITION TO MOTION TO BIFURCATE OR, IN THE ALTERNATIVE, TO SEQUENCE THE HEARING**

INTRODUCTION

Joint Petitioners South Carolina Electric & Gas Company ("SCE&G") and Dominion Energy, Inc. ("Dominion Energy") file this response in opposition to the Motion to Bifurcate or, in the alternative, to Sequence the Hearing (the "Motion") filed by the South Carolina Coastal Conservation League ("CCL") and Southern Alliance for Clean Energy ("SACE") (collectively, the "Movants"). The Motion must be denied because 2018 South Carolina Laws Joint Resolution Ratification No. 285 (S. 0954, enacted July 2, 2018) ("Ratification No. 285") and 2018 South

Carolina Laws Act. 258 (R. 278, H.B. 4375, codified June 28, 2018) ("Act No. 258") preclude bifurcation of these matters. Additionally, over six months ago, the Public Service Commission (the "Commission") ordered that the three dockets at issue be heard as a consolidated docket and established a procedural schedule directing this to be done at a single hearing. It did so with the concurrence of the principal parties. Bifurcating these matters, or even sequencing them, would be untimely and inconsistent with prior orders and positions taken by the parties. Bifurcating or sequencing these matters would frustrate convenience, expedition and judicial economy, invite confusion, duplication and repetition and prejudice the orderly and thorough presentation of the issues in these proceedings.

LEGAL STANDARD

Bifurcation is appropriate "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy." Rule 42, SCRCP. Courts are wary to bifurcate cases and do so with caution: "A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice." *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 108, 512 S.E.2d 510, 516 (Ct. App. 1998) (citing *Fortune v. Gibson*, 304 S.C. 279, 403 S.E.2d 674 (Ct. App. 1991)). A court may order bifurcation "only after considering convenience, expedition, and judicial economy" and determining that no prejudice would result. *Creighton*, 334 S.C. at 109, 512 S.E.2d at 517. This is consistent with the Commission's regulations which are "intended to promote efficiency in, and certainty of, the procedures and practices." 10 S.C. Code Ann. Regs. 103-802.

Not only are there provisions in both South Carolina law and Commission Orders prohibiting or precluding bifurcation of these matters, the standard of Rule 42 is not met to allow for bifurcation.

ANALYSIS

1. Ratification No. 285 and Act No. 258 Preclude Bifurcating These Dockets.

The Movants assert that it would be a "far better use of judicial resources for the Commission to receive testimony, hold a hearing, and issue an order regarding the prudency of abandonment . . . before receiving testimony, holding a hearing, and issuing an order regarding the proposed business combination of SCANA Corporation and Dominion Energy, Inc. . . . and the associated customer benefits plan or alternative proposals . . . ." (Motion at ¶ 13.) Ratification No. 285 and Act No. 258 make doing so practically or legally impossible for two reasons.

a. Ratification No. 285 Precludes Bifurcating These Dockets.

Ratification No. 285 requires that a hearing for these dockets shall not be held before November 1, 2018, and a final order be issued no later than December 21, 2018:

> The Public Service Commission shall not hold a hearing on the merits before November 1, 2018, for ***a docket in which requests were made pursuant to the Base Load Review Act***; however, the Public Service Commission may hold an administrative or procedural hearing for such a docket prior to a hearing on the merits. The Public Service Commission must issue a final order on the merits fo***r a docket in which requests were made pursuant to the Base Load Review Act*** no later than December 21, 2018.

See Ratification No. 285 (emphasis supplied). These are clearly dockets in which requests were made pursuant to the Base Load Review Act. The time span from commencement of the hearing to final order cannot exceed 50 days.

Movants request that during that time the Commission hold a hearing which will likely take several weeks. Due process and established Commission procedure would require that the Commission allow sufficient time after each hearing for the preparation of the hearing transcript, and the preparation and consideration of post-hearing briefs. The Commission would then issue an order regarding the prudency of abandonment ***and then*** receive testimony, hold a second hearing, and issue a second order —after briefing—regarding the proposed business combination with Dominion Energy and the rate proposals for dealing with the NND Project investment —all within 50 days. (*See* Motion at 2.) This is nonsensical.

In a matter of this importance and complexity, it is not feasible or advisable, nor does it comport with due process, for the Commission to hold two hearings involving three separate petitions and 19 parties, consider briefs and issue two orders all within 50 days. It would be practically impossible to comply both with due process and Ratification No. 285 if the Motion were granted.

b. Act No. 258 Precludes Bifurcating These Pending Dockets.

Act No. 258 provides that "the Public Service Commission must not accept a base load review application, nor may it ***consider*** any requests made pursuant to Article 4, Chapter 33, Title 58 other than in a docket currently pending before the commission." Act No. 258 (emphasis added). Movants request for the currently pending dockets to be bifurcated into "two distinct dockets," with the clear intention that the second docket consider the requests concerning "the associated customer benefits plan or alternative proposals," (Motion at ¶ 13.) Those matters expressly involve requests made by SCE&G and Dominion Energy under Article 4, Chapter 33,

Title 58. Opening this new, separate docket to consider the proposed regulatory plans would directly violate Act No. 258.

2. The Motion Is Untimely and Inconsistent with Prior Orders of the Commission and Positions Taken by the Movant.

More than six months ago, after having received motions, comments and proposals from multiple parties, and after the solicitation of comments from the parties by the hearing officer, the Commission issued Order No. 2018-80. In it, the Commission ordered that Docket Nos. 2017-305-E, 2017-207-E, and 2017-370-E be consolidated because "there are a number of common issues that must be considered in all three dockets," and ordered the adoption of the current procedural schedule. Order No. 2018-80, Docket No. 2017-370-E (Jan. 31, 2018). As stated in the Order, multiple parties were supportive of consolidation at that time. *See id.* In fact, in briefs filed in Docket No. 2017-207-E, CCL argued in support of consolidating Docket No. 2017-207-E and 2017-305-E. *See* Brief Responding to Order 2017-493, Docket No. 2017-207-E (Aug. 23, 2017); Response to Order No. 2017-637, Docket No. 2017-207-E (Oct. 16, 2017). No mention was made of consolidating these dockets and then unconsolidating them as to their core issues. In fact, none of the parties that support the motion to bifurcate objected to the procedural schedule adopted pursuant to Order No. 2018-80. In the interim and in reliance on the present schedule, SCE&G and Dominion Energy have prepared and prefiled direct testimony of a total of 13 witnesses.

As a matter of process, the appropriate time to make a proposal of the sort made here would have been when the hearing officer solicited procedural proposals before Order No. 2018-80 was entered, or at the time the Commission entered that order —not six months later, as the Movants now seek. The Movants' request is untimely, inconsistent with prior Commission

orders, and inconsistent with their prior position regarding those orders. For those reasons, the Motion should be denied.

3. Movants Cannot Meet the High Burden for Bifurcation.

Movants cannot meet the high burden required in South Carolina law to bifurcate proceedings: "A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice." *Creighton*, 334 S.C. at 108, 512 S.E.2d at 516. This is not the case. As the Joint Petition and Mr. Addison's pre-filed direct testimony indicates, the business combination with Dominion Energy and the issues related to the new nuclear project ("NND Project") are not distinct or severable. SCANA agreed to pursue the combination with Dominion Energy as a direct result of its limitations as a stand-alone company to provide the level of rate mitigation the public and SCE&G customers expected. Dominion Energy offered a generous package of such benefits but only as part of a combination proposal. That package of benefits is the Joint Petitioners' primary proposal for resolving the full range of rate and regulatory issues associated with the NND Project, and it is inextricably tied to the regulatory issues related to that project and to the proposed business combination. Neither can be logically considered without consideration of the others.

Movants' request to bifurcate is nothing less than a request that the Commission preclude the Joint Applicants from presenting their proposals for resolving the regulatory and rate issues arising out of the NND Project at this point in the proceedings where those plans can receive meaningful and appropriate consideration in light of the issues they are intended to address. The request would have the unavoidable effect of prejudicing the Joint Applicants in the presentation of their case and their proposed solution to the matters before the Commission. For that reason,

the request is grossly unfair and prejudicial and fails the standard in *Creighton,* 334 S.C. at 109, 512 S.E.2d at 517. If granted, it would represent a stark violation of due process and fundamental fairness.

4. Bifurcating or Sequencing These Matters Would Be Wasteful, Disruptive and Disorderly.

As the authority cited above indicates, the proper goal of judicial or quasi-judicial procedure is economy, efficiency, and expedition, all within the context of fairness to the parties and the avoidance of prejudice. *Creighton*, 334 S.C. at 109, 512 S.E.2d at 517. Duplication, delay, the multiplication of proceedings, and the creation of opportunities for error, confusion or disorder are contrary to these goals. But these latter outcomes are the inevitable result of bifurcating or attempting to sequence the hearing in this matter. Bifurcation or sequencing would most certainly not "promote efficiency in, and certainty of, the procedures and practices," as the Commission's regulations require. 10 S.C. Code Ann. Regs. 103-802.

Under either bifurcation or sequencing, witnesses will have to be called to the stand twice, cross examined twice, questioned by the Commission twice, and redirected twice. Prefiled testimony will have to be cut in two. The scheduling of experts and other witnesses would be unnecessarily and enormously complicated under such a procedure, resulting in substantially increased costs for both SCE&G and all of the other parties of record. The hearing officer and the Commission will be called to rule on objections concerning which questions relate to which side of the line of bifurcation. Certain lines of questioning would be premature in one proceeding or closed off as being too late in the other. Defining the line of bifurcation with clarity and applying it consistently throughout a weeks-long hearing or hearings would be nearly impossible, particularly since the Joint Petitioners' primary proposal for resolving the NND

Project issues is inextricably linked to underlying regulatory and rate making issues surrounding abandonment of the NND Project.

While Movants might believe that the issues can be easily isolated, that is not the reality. The abandonment of the V.C. Summer Project and subsequent approval of a cost recovery and benefits plan are intertwined. Most, if not all, of the testimony SCE&G would present regarding the prudency of the abandonment would duplicate the testimony regarding the proposed regulatory solutions and the business combination with Dominion Energy.

Therefore, to move forward with bifurcated or sequenced proceedings would likely result in unnecessary duplication of proceedings, confusion and a waste of administrative resources, all of which would be unfair and prejudicial, and represent an affirmative burden on Joint Petitioners, the regulatory process and other parties. Doing so would directly contradict the standard set forth in Rule 42, SCRCP and 10 S.C. Code Ann. Regs. 103-802.

CONCLUSION

The Commission is facing weighty decisions which will profoundly impact SCE&G's future and the rates of and service to its approximately 717,000 electric customers. Those customers deserve to know the solution to the questions presented by these filings in a timely manner. They deserve to know that all proposals for resolving the issues presented in this filing are being given fair and evenhanded review. The Joint Applicants do not believe that their interests, or the public interest, would be served by artificially trying to segregate the NND Project abandonment issues from those surrounding the proposed business combination and associated customer benefits package set out in the Joint Petition.

For the reasons set forth above, the Commission should deny the Motion to Bifurcate or, in the alternative, to Sequence the Hearing filed by the South Carolina Coastal Conservation League and Southern Alliance for Clean Energy.

Respectfully submitted,

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